53 S.B. CIVIL MISC.APPLLICATION NO.83/2007
(Smt. Meena Devi & Anr. Vs. Shree Balu Ram)

Date of Order :: 11th December 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. M.C.Bhoot, for the applicants-defendants.
Mr.J.R. Patel, for the non-applicant-plaintiff.

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Civil Second Appeal No. 118/2007, filed by the applicants was considered and summarily dismissed on 24.09.2007 by this Court for there being no ground to disturb the findings recorded by the learned subordinate courts while granting decree for eviction on ground of reasonable and bona fide requirement.

The applicant-defendants have now moved this application with the submissions that they are running a typing institution in the name of Mukesh Typing Centre for last 29 years at the suit premises; that at present about 60 students of 11th and 12th standard are learning typing at their institution; that the appellants are not in a position to immediately acquire alternative accommodation and thus need some time to vacate the premises. The appellants have prayed for allowing them time up to 31.05.2008 for vacating the suit premises.

While considering the matter on the said application, learned counsel Mr. J.R. Patel who had appeared in caveat in the appeal and is appearing for the plaintiff in the execution

proceeding too, was asked about the plaintiff's response to this application. Learned counsel Mr. J.R.Patel accepted notice and, while putting in appearance for the non-applicant plaintiff, though expressed his reservations on the prayer made by the applicants for allowing them extra time for vacating the suit premises but then, in all fairness, submitted that having regard to the old tenancy and commercial use of the premises, the plaintiff would be agreeable to allow the applicants time up to 30.04.2008 to vacate the suit premises but the applicants ought to be put to specific terms and conditions and should also be required to make payment of reasonable amount towards mesne profits. Learned counsel Mr.M.C.Bhoot appearing for the applicants, responded with the submissions that the applicants are agreeable to submit requisite undertaking and are also agreeable to make payment of reasonable amount towards mesne profits till they vacate the suit premises. Thereafter, learned counsel for the parties agreed that such amount towards mesne profits be settled at Rs.800/- per month, payable from 01.12.2007.

Having regard to the overall facts and circumstances of the case and the submissions made, more or less, in consensus by the learned counsel for the parties, the applicants are granted time to vacate suit premises by 30.04.2008, of course subject to the following conditions:

(i) The appellants shall personally submit an undertaking supported by affidavit before the executing court within one week from today to the effect that on or before 30.04.2008, they shall hand over peaceful and vacant possession of the suit premises to the plaintiff. They shall also undertake not to cause any damage to the suit premises nor to make any alteration and not to assign, sublet or in any manner part with possession to any other person of the suit premises and not to put the premises to any use other than the present use and not to cause any nuisance.

(ii) The appellants shall deposit within three weeks the arrears, if any, of the rent and of the decreetal amount and shall further pay to the landlord the amount for use and occupation of the suit premises at the rate of Rs. 800/- per month with effect from 01.12.2007 or deposit this amount in the bank account of the landlord (particulars whereof shall be furnished by landlord to the appellants within two weeks, if not already furnished) month by month on or before 15th day of the next month.

It is made clear that upon the applicants' failure to comply with any of the conditions aforesaid or violating any terms of the undertaking, the plaintiff shall be entitled to proceed with the execution of the decree forthwith in accordance with law.

With the observations, terms, and conditions aforesaid this Misc. Application stands partly allowed; and is disposed of as such.

(DINESH MAHESHWARI), J.

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